

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Parts 1, 22, 24, 27, 74, 80, 90,)	WT Docket No. 10-112
95, and 101 To Establish Uniform License)	
Renewal, Discontinuance of Operation, and)	
Geographic Partitioning and Spectrum)	
Disaggregation Rules and Policies for Certain)	
Wireless Radio Services)	

REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”)¹ respectfully submits these reply comments in response to the record and the *Further Notice of Proposed Rulemaking* (“*Further Notice*”) released by the Federal Communications Commission (“FCC” or “Commission”) seeking comment on ways to modernize the licensing process for geographic wireless licenses.² While it supports the FCC’s goal to minimize the digital divide, CCA agrees with the record that offering incentives for rural buildout is a more appropriate way to meet the Commission’s objectives.

DISCUSSION

Chairman Pai’s Digital Empowerment Agenda (“DEA”) recognizes that “[m]obile broadband is especially crucial for rural America” and “can bring much-needed jobs and

¹ CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

² *Amendment to Parts 1, 22, 24, 27, 74, 80, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 10-112, FCC 17-105 (rel. Aug. 3, 2017) (“*Second Report and Order*” and “*Further Notice*”).

opportunities to parts of rural America that might otherwise be left behind.”³ CCA applauds Chairman Pai and the Commission for the continued focus on expanding mobile broadband service to rural areas and shares the Chairman’s intense focus on this critical need. For instance, the recent *Mobility Fund II Order* was adopted to address the “rural and high-cost areas of our country [that] have been left behind.”⁴ In addition, the FCC recently has proposed procedures and program requirements for the Connect America Fund Phase II (“CAF-II”) auction, thereby bringing the FCC one step closer to fulfilling its commitment “to ensure that the citizens of every state that was promised new, better, faster broadband service by the FCC back in 2015”⁵ receives that service. However, as the Commission recognizes, and CCA member experience demonstrates, many rural parts of the country still do not have access to *any* mobile wireless service, let alone next-generation technologies. The Universal Service Fund (“USF”) is one of the most important ways to help bridge the digital divide; another is unleashing more spectrum and maximizing efficient use of all spectrum.

The Commission’s *Further Notice* presents an opportunity to assist in promoting buildout in these areas. CCA echoes commenters that encourage the Commission to consider alternative approaches to renewal requirements for rural areas that take into account the “low population density, low priority in the equipment distribution chain, [and] significantly higher construction

³ Remarks of FCC Commissioner Ajit Pai, “A Digital Empowerment Agenda,” The Brandery at 4 (Sept. 13, 2016), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-341210A1.pdf (“DEA”).

⁴ *Connect America Fund; Universal Service Reform – Mobility Fund*, WT Docket Nos. 10-90, 10-208, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152 (rel. Mar. 7, 2017) (“*MF II Report and Order*”).

⁵ Ajit Pai, Chairman, FCC, Statement, *Connect America Fund*, WC Docket No. 10-90; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208 (Mar. 7, 2017). See also *Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903)*, Public Notice, 32 FCC Rcd 6238 (rel. Aug. 4, 2017).

and backhaul costs” associated with these areas.⁶ Specifically, CCA supports the adoption of an incentive-based approach to encourage wireless providers to meet and exceed their current buildout requirements. CCA also offers several related recommendations that the Commission should consider to further its goal to bridge the digital divide.

I. The Commission Should Adopt an Incentive-Based Approach to Increase Buildout to Rural America

CCA joins the majority of commenters that support an incentive-based approach to license buildout as the most appropriate way to facilitate service to unserved and underserved areas.⁷ As a general matter, CCA has long-supported strong buildout requirements and extended license terms to increase certainty and investment for licensees. Specifically, CCA continues to encourage the FCC to extend initial license terms from 10 years to 15 years,⁸ and further supports the Commission’s suggestion that license terms may be extended upon renewal under an incentive-based buildout. CCA also supports proposals on record that would permit longer license terms (e.g., an additional five years) upon renewal if providers exceed their initial buildout requirements either by a certain established percentage, or by providing service to an unserved area.⁹ As the Commission has previously recognized, the certainty of an extended license term – whether the initial term or upon renewal – would incentivize longer-term

⁶ Comments of Blooston Licensees at 1 (filed Oct. 2, 2017) (“Blooston Comments”); *see also* Comments of CTIA (filed Oct. 2, 2017) (“CTIA Comments”); Comments of Verizon (filed Oct. 2, 2017) (“Verizon Comments”); Comments of NTCA- The Rural Broadband Association (filed Oct 2, 2017) (“NTCA Comments”); Comments of American Messaging Services (filed Oct. 2, 2017) (“AMS Comments”); Comments of Sensus USA Inc. and Sensus Spectrum LLC (filed Oct. 2, 2017) (“Sensus Comments”).

⁷ *See generally* Blooston Comments; CTIA Comments; Verizon Comments; NTCA Comments; AMS Comments; Sensus Comments.

⁸ *See* Comments of Competitive Carriers Association, WT Docket No. 06-150 at 6 (filed Oct. 10, 2017) (“CCA 700 MHz Comments”); Comments of Competitive Carriers Association, WT Docket No. 17-69 at 30 (filed May 8, 2017) (“CCA MCR Comments”).

⁹ *See, e.g.*, CTIA Comments at 16; Verizon Comments at 7.

investments in rural and remote areas.¹⁰ Due to the challenging business case, rural areas often need additional time and more incentives to deploy. As CTIA explains, “[i]n rural areas, with fewer subscribers... a longer renewal license term could alter [the] return on investment analysis by extending out the term for return by, for example, 50 percent with a 15-year renewal term on an initial 10-year license.”¹¹

However, the FCC should reject proposals to impose new additional regulatory or buildout requirements on existing licenses or renewal applications. Increased burdens and economic hardship would hinder, rather than promote, buildout in rural America.¹² CCA agrees with concerns expressed in the record that additional construction requirements may not target the areas that need them the most, resulting in uneconomic and/or duplicative buildout, as well as an inefficient use of resources, ultimately “divert[ing] limited capital away from areas that have proven need.”¹³ Additionally, it is premature to impose additional buildout requirements without an accurate understanding of the buildout landscape for 4G and 5G, and proposals to that effect should be rejected.¹⁴

If the Commission nevertheless decides to adopt a forced additional buildout approach, it must refrain from applying these requirements on a retroactive basis. Contrary to one commenter’s suggestion,¹⁵ retroactive rulemaking would severely undermine the investment-

¹⁰ *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8077-78 ¶ 176 (2016) (recognizing that longer license terms “give[s] licensees sufficient certainty to invest in their systems.”). *See also* CTIA Comments at 16.

¹¹ CTIA Comments at 16.

¹² *See, e.g.*, CTIA Comments at 12-15; Verizon Comments at 10-17; NTCA Comments at 3-4; Blooston Comments at 4-6.

¹³ CTIA Comments at 14; *see also* Verizon Comments at 10-17.

¹⁴ *See* CTIA Comments at 9; Verizon Comments at 11.

¹⁵ *See* Comments of Rural Wireless Association at 4.

backed expectations of rural licensees, alter business plans, breed uncertainty, and deter further investments in the spectrum marketplace.¹⁶ This is especially true for small, rural and mid-size carriers that have dedicated already-limited resources to developing buildout plans and meeting relevant buildout requirements imposed at the time of license acquisition. Imposing additional buildout requirements may not be financially feasible for these providers, thus preventing, rather than encouraging, buildout in these rural areas. Ultimately, these consequences fly in the face of the Commission's stated goals in this proceeding and the Chairman's agenda. Indeed, rule changes that alter licensee requirements and economic expectations for existing licenses drive away capital and investment and will inhibit wireless services in rural areas.¹⁷ As such, new requirements must be imposed only on future licenses auctioned after the new rules take effect.

Moreover, if the Commission moves forward with new buildout and renewal policies, it should take into account the unique considerations associated with larger versus smaller license areas. As noted in more detail below, it is more likely that rural areas will be constructed when spectrum is licensed in small geographic areas.¹⁸ Thus, any new buildout and renewal

¹⁶ See CTIA Comments at 15.

¹⁷ Moreover, the application of retroactive regulation in this vein may open the FCC up to additional legal challenges. A regulation applies illegal retroactive effects when it would "impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994). If more stringent renewal requirements are imposed on previously issued licenses in the middle of a license term, the Commission would no doubt face challenges that it is impairing the rights the licensee acquired at the time of the initial license auction, increasing a licensee's "liability for past conduct" (e.g., imposing the ultimate sanction of license forfeiture because the licensee (or worse yet, a prior licensee) failed to build out more quickly or more extensively) and "impos[ing] new duties with respect to transactions already completed." *Id.* at 272-273.

¹⁸ See *ex parte* letter from C. Sean Spivey, Assistant General Counsel, CCA; Jill Canfield, Director, Legal and Industry & Assistant General Counsel, NTCA – The Rural Broadband Association; Caressa D. Bennet, General Counsel, Rural Wireless Association, Inc.; and John A. Prendergast, Managing Partner, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP to Marlene H. Dortch, Secretary, FCC (filed Mar. 11, 2014) (March 11 Joint Ex Parte); see also Ex Parte Letter from C. Sean Spivey, Assistant General Counsel, Competitive Carriers Association; Jill Canfield, Director, Legal and Industry & Assistant General Counsel, NTCA – The Rural Broadband Association; Caressa D. Bennet, General

requirements should be designed to encourage deployments in the totality of the license area – including rural, urban and suburban areas – consistent with the goal of ubiquitous mobile broadband deployment.

In addition, CCA also agrees that imposing further reporting requirements in license renewal applications would be overly burdensome and contravene any associated public interest benefits.¹⁹ Many of CCA’s members are small, rural providers with finite, limited resources. These resources should be directed towards building out rural communities, not diverted towards additional administrative compliance procedures. Indeed, Chairman Pai has attempted to mitigate regulatory burdens and morass, and these proposals can further that mutual goal.

Finally, Verizon’s proposed sunset presumption must be rejected.²⁰ CCA urges the Commission to see through this thinly-veiled attempt by Verizon to excuse itself from its Upper 700 MHz C-Block obligations: open access requirements that it knowingly assumed in return for a significant discount when it acquired the vast majority of the “largest and most lucrative of five blocks in the 700 MHz range auctioned in 2008.”²¹ Verizon has a history of failing to honor these requirements and this proposal is yet another attempt to circumvent the Commission’s

Counsel, Rural Wireless Association, Inc.; and John A. Prendergast, Managing Partner, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP to Marlene H. Dortch, Secretary, FCC (Mar. 20, 2014) (March 20 Joint Ex Parte) (submitting a joint geographic license area proposal for use in the 600 MHz auction that divides the United States and its territories into 416 Partial Economic Areas (“PEAs”)). *See also*, Comments of Competitive Carriers Association Regarding the Use of “Partial Economic Areas,” GN Docket No. 12-268 (filed Jan. 9, 2014), *and* Reply Comments of Competitive Carriers Association Regarding the Use of “Partial Economic Areas,” GN Docket No. 12-268 (filed Jan. 23, 2014).

¹⁹ *See* CTIA Comments at 18-19; Verizon Comments at 17-19.

²⁰ *See Further Notice* ¶ 123; Verizon Comments at 7-10; CTIA Comments at 16-17.

²¹ Chris Ziegler, *Why is Verizon’s iPhone 5 Unlocked? Don’t Thank Google or the FCC*, THE VERGE (Sept. 25, 2012) <https://www.theverge.com/2012/9/25/3405610/verizon-iphone-5-unlocked-open-access-fcc>. *See* Matthew Lasar, *Verizon: We Promise To Honor the Block C Open Access Rules*, ARSTECHNICA (May 7, 2008) *available at* <https://arstechnica.com/uncategorized/2008/05/verizon-we-promise-to-honor-the-block-c-open-access-rules/> (quoting Verizon Vice President Jim Gerace as saying that Verizon will “[o]f course” “abide by the [open access] rules.”).

regulations, this time on a permanent basis.²² Just as additional buildout requirements should not modify the investment-backed expectations of previously awarded licenses, neither should Verizon receive a potential windfall in having requirements disappear that clearly allowed it to purchase significant spectrum for less than other comparable bands in the same auction. Accordingly, the FCC should reject this proposal. Overall, the FCC must maintain the successful licensing regime it previously has adopted including buildout requirements and conditions imposed on licenses. Going forward, the FCC must consider carriers' significant investment in spectrum resources and continue to encourage further buildout. Penalties and other punitive efforts only will seek to deter future investment and deployment.

II. Other Opportunities to Promote Buildout in Rural Areas

The Commission also should pursue other opportunities outside of this proceeding to reduce regulatory barriers to rural broadband deployment, including adopting different geographic license sizes through the country to reflect the challenging economic circumstances, lower density and difficult terrain in many areas throughout the United States. In addition, CCA urges the Commission to act on several aspects of Chairman Pai's DEA like creating a rural dividend and issuing decisions in its wireless and wireline infrastructure proceedings.

To better ensure that buildout is targeted to the rural areas that need it the most, the Commission should carefully consider the size of geographic licenses moving forward. CCA reiterates that smaller geographic license areas are critical for rural and regional carriers to gain a fair opportunity to acquire or lease spectrum in areas that match their existing service territories. CCA agrees with NTCA's characterization in the record: "[t]he larger the geographic license, the

²² For instance, the FCC levied a \$1.25 million fine against Verizon in 2013 for blocking tethering apps in the Android market in violation of the open access requirements. *See Cellco Partnership d/b/a Verizon Wireless*, File No. EB-11-IH-1351, Order & Consent Decree, DA 12-1228 (rel. July 31, 2012).

more likely it is that significant rural territory will be lumped together with highly-desirable (expensive) urban territory,” and buildout will be focused on urban, more populated sections in these license areas.²³ In contrast, when spectrum is licensed according to smaller geographic areas, there is more opportunity to promote expansion of mobile broadband service across vast swaths of the United States under an attainable buildout structure.²⁴ Accordingly, CCA supports NTCA’s suggestion that the FCC should encourage “collaboration between providers who may be interested in serving different geographic areas within a single spectrum asset.”²⁵

In addition, CCA encourages the FCC to move forward with several proposals set forth in Chairman Pai’s DEA, including the creation of a “rural dividend” to supplement existing funding sources by setting aside 10 percent of money raised from spectrum auctions for the deployment of mobile broadband in rural America.²⁶ In that same vein, CCA applauds Congress’s bipartisan introduction of the Advancing Innovation and Reinvigorating Widespread Access to Viable Electromagnetic Spectrum (“AIRWAVES”) Act which would direct the FCC to allocate 10 percent of auction proceeds for the deployment of wireless infrastructure. These funds would support rural areas and provide additional certainty for wireless providers in these areas, thus increasing investment and commitments. CCA also supports the Chairman’s proposed tax credit for startups in Gigabit Opportunity Zones²⁷ and commends Senator Shelley Moore Capito for incorporating these ideas into legislative language in the Gigabit Opportunity Act.²⁸ Similarly,

²³ NTCA Comments, 2.

²⁴ *Id.*

²⁵ NTCA Comments, 5.

²⁶ DEA at 4.

²⁷ DEA at 4, 10.

²⁸ Press Release, *Capito Introduces Legislation to Accelerate Broadband Access in Rural America* (May 3, 2017), <https://www.capito.senate.gov/news/press-releases/capito-introduces-legislation-to-accelerate-broadband-access-in-rural-america>.

the House companion bill, H.R. 2870, would provide tax benefits for investments in established "gigabit opportunity zones" to expedite the deployment of broadband in low-income rural and urban communities. In addition to these initiatives, policymakers should consider a range of options to support broadband in rural America through updates to the tax code, including making USF support tax exempt.²⁹

CCA also supports the goals of the Mobility Fund, recognizing that universal service is necessary for carriers to deploy, maintain, and upgrade mobile broadband networks in underserved and hard-to-serve areas. Specifically, in response to the FCC's recent *Mobility Fund II Challenge Process Comment Public Notice*,³⁰ CCA continues to urge the Commission to adopt a challenge process that is efficient, eases burdens on smaller entities, and generates accurate determinations of where qualifying coverage exists and where Mobility Fund-II must target support.³¹ These funding decisions are critically important and must not be rushed.

Finally, CCA urges the Commission to take prompt action to remove barriers to wireless and wireline infrastructure investment to improve connectivity for rural Americans. There is an undisputed need for updated and streamlined rules as raised by the FCC in recent proceedings,³²

²⁹ See Testimony of Steven K. Berry, CCA, Before the House Energy and Commerce Committee Hearing "Broadband: Deploying America's 21st Century Infrastructure" at 6 (Mar. 10, 2017), *available at* <http://docs.house.gov/meetings/IF/IF16/20170321/105740/HHRG-115-IF16-Wstate-BerryS-20170321.pdf>.

³⁰ Comment Sought on Mobility Fund Phase II Challenge Process Procedures and Technical Implementation, Public Notice, WC Docket No. 10-90 & WT Docket No. 10-208 (rel. Oct. 18, 2017).

³¹ See Comments of Competitive Carriers Association, WT Docket No. 10-208 et al. at 2 (filed Apr. 26, 2017) ("CCA Mobility Fund II Comments"); *see also* CCA MCR Comments at 38-41.

³² CCA reiterates that imposing reasonable restraints on state and local infrastructure-related fees, and adopting a "deemed granted" remedy for the Section 332(c)(7) shot clocks, along with revising the FCC's framework concerning the National Environmental Protection Act and the National Historic Protection Act, will allow competitive carriers to make a better business case for deployment, especially in rural and hard-to-serve areas. *See* Letter from Elizabeth Barket, Law & Regulatory Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 17-79, 15-180; WC Docket No. 17-84 (Aug. 1, 2017).

and as reflected in the ongoing, extensive collaboration of the FCC's Broadband Deployment Advisory Committee ("BDAC"). CCA is encouraged by Commissioner Carr's announcement that he will be the lead Commissioner in working to streamline and improve wireless infrastructure rules and applauds the Commission for moving forward on these deployment benefits. By reducing or eliminating regulatory barriers to infrastructure, the Commission will take an important step to foster buildout opportunities for wireless providers in unserved and underserved areas of the United States. CCA appreciates the opportunity to collaborate on streamlining infrastructure rules and policies through the BDAC and looks forward to helping finalize new rules that will indeed spur mobile broadband deployment.

CONCLUSION

For the foregoing reasons, CCA encourages the FCC to adopt incentive-based policies reflected in the record that are aimed at spurring broadband deployment, including, but not limited to, extending renewal terms for licensees that exceed initial buildout requirements. CCA also encourages the FCC to consider other opportunities to meet its goal to substantially increase the number of rural Americans with access to wireless communications systems.

Respectfully submitted,

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